



JTPA

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Serving the People of California

DIRECTIVE

Date: September 11, 1997

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TO: SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
JTPD PROGRAM OPERATORS
EDD JOB SERVICE OFFICE MANAGERS
JTPD STAFF

SUBJECT: PROCUREMENT

EXECUTIVE SUMMARY:

Purpose:

This Directive provides combined state and federal guidance regarding the procurement of goods and services by the Job Training Partnership Act (JTPA) recipients and subrecipients. This document contains content changes from the Interim Directive.

Scope:

This Directive requires that Service Delivery Area (SDA) and other subrecipients shall comply with federal and state procurement regulations and policies.

Effective Date:

This Directive is effective July 1, 1997.

REFERENCES:

- JTPA Sections 4, 104(b)(11)(A), 107(a-e), 108(b)(5), 123(a)(1-3) and (b)(1-2), 141(d)(3)(A-C), (e)(2), (f) and (h), 164(a)(3)(A-I), (a)(4-7), (b)(1-3) and (c)(1-3), 165(e), 204(d)(2)(b), and 313(b)(6)
- JTPA Regional Bulletin 25-93
- Title 20 Code of Federal Regulations (CFR) Sections 626.5, 627.420, 627.422, 627.423, 627.424, 627.435, 627.440, 627.460, 627.463, 627.465, 627.702, 627.703, 627.902(e), 627.904(e), 627.905, 627.906(a), 631.13, 631.14, and 631.52
- Office of Management and Budget (OMB) Circulars A-87, A-102, and A-110.
- Title 29 CFR Parts 34.20, 97, and 98.

- Department of Labor (DOL) Technical Assistance and Training Series for JTPA Procurement, 1993
- DOL Procurement Systems Technical Assistance Guide, 1986

STATE-IMPOSED REQUIREMENTS:

This Directive contains some state-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS:

This Directive supersedes Interim Directive 94-10, dated May 19, 1994. Retain this Directive until further notice.

BACKGROUND:

The JTPA Amendments of 1992 and the subsequent regulations issued in the Interim Final Rule by DOL provided substantial new requirements for procurements with JTPA funds. The Final Rule dated September 2, 1994, contains some substantive regulatory changes from the Interim Final Rule.

POLICY AND PROCEDURES:

The following section describes federal rules and state requirements for procurement. Included in the discussion are substantive changes from the Interim Final Rule.

Definitions:

The CFR provides definitions of significant terms in Section 626.5. The terms, vendor and subrecipient, remain unchanged and continue to be critical in determining the required procurement method and contract terms. The term service provider changed by removing the word subrecipient. A service provider is now considered a subrecipient or vendor.

There were two significant changes in the definition of off-the-shelf training package. The Final Rule removed the word unmodified and changed the word substantial to sufficient. The training is still considered off-the-shelf with modifications for JTPA that do not raise the price or alter the training components. The training must be purchased by the general public to be considered off-the-shelf.

1. OMB Circular A-133:

“Federal award means Federal financial assistance and Federal cost-reimbursement contracts. It includes Federal awards made directly by Federal awarding agencies or indirectly by recipients of Federal awards or subrecipients. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors . . . Federal financial assistance means assistance received or administered to carry out a program”

2. DOL Procurement System Guide March 1986:

“A responsive entity is one that submits a proposal or bid which meets all requirements of the solicitation adequately; and the submitted document does not constitute a substitute or counter offer. When a bidder substitutes a “like item,” the submittal is considered non-responsive when the like item fails to meet published specifications. The same principle holds when the proposal is a substitute or counter offer.”

“A responsible entity is one that has been determined to: (1) have adequate financial resources to perform the contract or the ability to obtain such resources; (2) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and business commitments; (3) have a satisfactory performance record; (4) have a satisfactory record of integrity and business ethics; (5) have the needed organization, experience, accounting, operational control and technical skills or ability to obtain them; (6) have adequate production, construction or technical equipment and needed facilities or the ability to obtain them; and (7) be both qualified and eligible to receive the award under applicable law and regulation.”

A private postsecondary education institute is defined in the California Education Code Section 94302(w) as “. . . any person doing business in California that offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education primarily to people who completed or terminated their secondary education or are beyond the age of compulsory high school attendance.” Information Bulletin B95-83 provides further guidance regarding postsecondary education.

General Provisions:

The CFR Section 627.420(b) requires that procurements be conducted to ensure full and open competition. When any purchase is made, it can only be for an allowable cost. The purchaser must conduct a cost or price analysis to determine that the expenditure is reasonable.

Each subrecipient must have written procurement procedures that include:

- identification of the allowable methods of procurement that the entity will use;
- description of the conditions under which each method is appropriate;
- a description of noncompetitive procurement and the circumstances under which it can be used;
- circumstances under which bids will be rejected;
- proposal evaluation for Request for Proposals (RFP), if applicable;
- a description of failed competition and the rights and options in the event of a failure;

- dispute resolution process which is separate and distinct from the JTPA grievance process;
- code of conduct;
- conflict of interest policy including sanctions for failure to comply; and
- description of the documentation process including where the documentation will be located.

All steps of each procurement must be documented.

All written procedures and policies for procurement activities must be available to the public.

Procurements from subrecipients shall be conducted at least every three years.

Excluding small purchases, the subrecipient must justify the procurement method used for each purchase.

The federal government prohibits awards to any party that is debarred. The federal government and the Job Training Partnership Division (JTPD) compile lists of debarred parties. The federal list is published by General Services Administration; a copy may be obtained by telephoning the Superintendent of Documents (202/512-1800) and asking for stock number 722-022-00000-8. The JTPD issues the list of debarred entities in an Information Bulletin in May of each year. It is the subrecipient's responsibility to ensure that funds are not awarded to entities on the debarment lists.

Methods of Procurement:

1. Small Purchase

Small purchases are made from vendors for goods or services under \$25,000. ***Following the procedures in this Directive for small purchase will constitute justification of the procurement method chosen.*** The requirements are:

<i>Dollar Range of Purchase</i>	<i>Contacts and Method</i>
<i>\$0 to \$999</i>	<i>1 quote or price*</i>
<i>\$1,000 to \$9,999</i>	<i>2 documented quotes**</i>
<i>\$10,000 to \$25,000</i>	<i>3 written quotes**</i>
<i>*This purchase is defined as a small purchase under \$1,000 and not as a noncompetitive or sole source procurement.</i>	
<i>**Unless sole source justification exists.</i>	

For the “1 quote or price,” the sales receipt is sufficient documentation of the quote or price. An approved vendor list is not required for 1 quote or price purchases. For the 1 quote or price and “2 documented quotes,” the documentation can include product or service catalogs, current price lists, or telephone contact with the vendors to obtain quotes (i.e., a memo which reflects the oral quotations by source and is signed by a staff person of the subrecipient). **Catalogs and price lists should be updated annually.**

A Request for Quote (RFQ) is required for small purchases of \$10,000 or more. The RFQ indicates the quantity, time frames and all other requirements of the product or service sought. **Quotes must be solicited from vendors that can reasonably be expected to provide the goods or services needed.**

For “3 written quotes,” the RFQ must either be provided in writing to the vendors or transmitted as uniformly as possible over the telephone. To be considered, the response must be signed and dated by the vendor.

A price analysis must be conducted prior to purchase. Lowest price is the normal criteria for selecting goods and services. Qualifications of the vendor, availability of the goods or services, service, quality and location are some additional factors that could influence the procurement. **The documentation must contain the basis for vendor selection, and if the basis is something other than price, the subrecipient must prepare written documentation describing the additional criteria for selection, the relevance of the criteria to the need and benefit, and the relative advantage of the offering from the selected vendor. Documentation should be retained as described in the procurement procedures.**

Many governmentally-linked subrecipients purchase office supplies and basic office equipment through their central governmental supply house or procurement administration. Items procured for subrecipient use in this manner will be assumed, for the purposes of JTPA, to be purchased competitively by the central governmental purchasing agency and to meet the requirements of these regulations. Any item purchased solely for JTPA use must be purchased following this Directive, the JTPA and its regulations.

2. Noncompetitive Proposals (Sole Source)

To conduct a noncompetitive procurement, the criteria established in Section 627.420(d)(iv) must be met.

Individual referral to classroom training and On-the-Job Training (OJT) procurements require special considerations. For every procurement from a training provider, school or employer, a determination of demonstrated performance must be conducted. **Prior to the enrollment of any participant, a school or training institution must meet the state requirements for conducting training (Private Postsecondary certification, Department of Health Services approval,**

business license, etc.). The catalog used for course selection must be updated at least annually and a copy must be retained for documentation. The Individual Services Strategy may be used to document the reasons for selection of the classroom training provider or the OJT employer.

The subrecipients may not place participants in OJT with employers who are debarred by the federal or state government.

Classroom training may be provided by either vendors or subrecipients. The type of organization (community college, adult school, high school, private school, etc.) does not determine the vendor or subrecipient designation. The determination is made based on the relationship between the service provider and the program using the definitions found in the regulations.

Vendor purchases are not covered by Section 627.420(h). Purchases of goods and services for the general administration of the administrative entity should follow normal business practices to ensure receipt and quality of the goods and services.

When purchasing training from an institution or OJT employer, the demonstrated performance of the vendor must be assured using prior history and documenting the source of the data. **The SDA or subrecipient placing a participant in training will need to ensure access to all records regarding the participant. Agreements with vendors and OJT employers must include statements that permit monitoring of the participant's financial and attendance records. For OJT employers the participant's financial records include timesheets, payroll records and canceled checks. For training provided by vendors, participant's financial records include student loan, grant and tuition information. The formal agreement between the vendor or OJT employer and the SDA or subrecipient must include language to ensure access to the above referenced records by the responsible entities. The responsible entities include the SDA, the subrecipient, the state, the Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives. The records include any books, documents, papers and computer data directly pertinent to the records of the participant. The right to the records includes the right to make excerpts, transcripts and photocopies. The right also includes the reasonable and timely access to personnel for the purpose of interviews and discussions related to the records of the participant.**

3. Sealed Bids (Formal Advertising)

For sealed bid procurement, the state requires the preparation of an Invitation for Bid (IFB) or similar solicitation document. The subrecipient must publicly advertise the solicitation. The subrecipient must notify the bidders of the dispute resolution process. The bids must be opened publicly at the time and place stated in the solicitation. The subrecipient can reserve the right to reject any or all bids when the bid is not responsive. **However, the subrecipient must**

state this in the solicitation and the specific reasons must be fully described and documented in the procurement file.

4. Competitive Proposals

This method is typically used when the nature of the goods or services to be acquired cannot be defined as precisely as required by the sealed bid method; and, specifically, when factors other than price are important in the selection decision.

The subrecipient must indicate in the Request for Proposals (RFP) the scope of work and service area, the method for scoring the proposals, the deadline for receipt, and the disputes process. The various components of the request will be valued and the value assigned should be reasonable in relation to the entire request. The subrecipient can reserve the right to reject any or all bids when the bid is not responsive. ***However, the subrecipient must state this in the solicitation and the specific reasons must be fully described and documented in the procurement file. The subrecipient must establish a method for recording the date and time that proposals were received. This process must ensure that only proposals received in accordance with the date and time specified in the RFP qualify for the evaluation process. A log is an acceptable method for recording date and time of receipt.*** The subrecipient must conduct a cost or a price analysis of the proposals selected for consideration.

The selected bidders are offered contracts after the evaluation and negotiation process is completed. The contracts with subrecipients must contain the subrecipient clauses in Section 627.420(h). The provisions listed under Section 627.420(h)(4) (ii) and (iii) are to be included only in applicable agreements. Agreements, with vendors who are not involved with carrying out the program, are not required to contain the clauses in Section 627.420(h)(4). When purchasing material subject to copyright law, the subrecipient must include the copyright provisions in Section 627.420(h)(4)(ii).

Regardless of the amount of the award, all subrecipients shall certify to a Drug Free Workplace. All awards to subrecipients in excess of \$100,000 shall certify that no funds shall be used for lobbying. All contracts and awards to vendors and subrecipients in excess of \$25,000 shall include debarment certifications.

The attachments to this Directive are included to provide additional information regarding conflict of interest regulations in California, the California Multiple Awards System (CMAS), and sample procurement steps for sealed bids and request for proposals. ***The subrecipients may use the CMAS for procurements following the small purchase guidelines for procurements under \$25,000; for procurements over \$25,000, three written quotes are required. If there are insufficient vendors to provide the quotes, a sole source justification should be written.***

ACTION:

Bring this Directive to the attention of all affected staff and all subrecipients.

INQUIRIES:

Please direct questions about this Directive to your Program Manager or Jean Cole at (916) 654-8284.

/S/ BILL BURKE

Acting Assistant Deputy Director

Attachments included online:

1. Sealed Bid Procurement (Attachment C)
2. Request for Proposals (RFP) Content (Attachment D)
3. Request For Proposal Steps (Attachment E)

Additional attachments not available online. To obtain a copy e-mail JTPD at **JTPDLIB@EDD.CA.GOV** (subject line should read: “Attachment”) or contact Jim Scholl at (916) 657-4610.

4. A Guide to the Political Reform Act of 1974 - California's Conflict of Interest Law for Public Officials (Attachment A)
5. California Multiple Award Schedule (CMAS) - Local Government Usage May 10, 1996 (Attachment B)

SEALED BID PROCUREMENT

Prepare an Invitation for Bid (IFB). The IFB must include full and clear definitions and descriptions of the items to be procured, and key performance criteria, dimensions or specifications.

Distribute the IFB to vendors on established bidders' lists (if available). Publicly advertise the procurement in a local newspaper with SDA-wide circulation, allowing sufficient time prior to the date of the bid opening to permit adequate responses to the solicitation.

Receive and open all bids publicly at the time and place stated in the IFB.

Determine, based on the offers, the lowest bidder who meets the technical requirements.

Determine the demonstrated performance and ability of the lowest bidder who meets the technical requirements (for service providers).

Award a firm fixed-price or fixed unit price contract by written notice to the responsible offeror whose bid represents the lowest price and conforms with all of the specifications in the IFB. Also provide written notification of the awarding of the contract to the bidders who were not accepted.

Document the procurement in the procurement file.

REQUEST FOR PROPOSALS (RFP) CONTENT

GENERAL INFORMATION:

- Issuance date
- Name and address of contracting agency
- Name, address and telephone number of the contact person
- Name, address, telephone number and location of the person to whom the submission is to be made
- Instructions on the number of copies to be submitted and the acceptable format, and the date and time for submission
- Any other requirements (i.e., responsiveness criteria) that must be satisfied in order for the proposal to be considered for evaluation
- Table of contents
- Signature and date block for the offeror

SPECIFICATIONS:

- Minimum and Maximum amount of funding for the contract

STATEMENT OF WORK:

- Background or project content
 - ◆ General requirement description
 - ◆ Related projects
 - ◆ Problem statement
 - ◆ Statutory or regulatory foundation
- *Project Objectives
 - ◆ *Purpose
 - ◆ *How results will be used
- *Scope of work
 - ◆ *Population to be served
 - ◆ *Number to be served
 - ◆ *Training or services to be provided
- *Period of Performance
- *Performance Standards
- *Reporting Requirements

* Must be included in the proposal

CONTRACT REQUIREMENTS:

- Compliance with JTPA regulations
- Patent rights
- Copyrights and rights to data
- Access to records
- Audit requirements

REPRESENTATIONS AND INSTRUCTIONS:

- Certifications
 - ◆ Drug free workplace
 - ◆ Debarment or suspension
 - ◆ Lobbying
- Instructions, conditions and notices to bidders
 - ◆ The approximate date of the award notification
 - ◆ Description of the disputes process for contesting the bid process
 - ◆ Description of the procedure for responding to bidders inquiries, including the date, time and place of a bidder's conference if one is planned

EVALUATION FACTORS FOR AWARD AND RELATIVE IMPORTANCE OF EACH
IN THE EVALUATION PROCESS

REQUEST FOR PROPOSAL STEPS

Prepare a Request for Proposals (RFP) as described in Attachment D.

Issue a Public Notification. The notification may be made through an announcement in a local public medium (e.g., newspaper) or other media that covers the entire service area. If the SDA maintains a bidder's list, the agencies listed may be individually notified. A copy of the RFP is provide to anyone who requests it. Compile a list of everyone requesting a copy of the RFP.

Establish proposal evaluation procedures. Including:

- clear staff responsibilities and a standard worksheet or check list for determining responsiveness of each proposal;*
- description of evaluation criteria and a standard evaluation worksheet to be used in recording the evaluations of each proposal;*
- analysis of costs to verify allowability and to determine reasonableness;
- identification of staff responsibilities for completing proposal evaluation and for summarizing evaluation results;
- description of methods for ensuring independence of ratings by those involved in the evaluation process (i.e., prohibit discussion among staff, sequestered evaluators);
- identification of policy and process by which selection of awardee(s) will be made.

*These items should be sufficiently completed before issuance of the RFP so relevant parts can be included.

Determine if a bidders' conference will be conducted. If one is conducted, notify all parties to whom the RFP has been distributed. This notification can be included in the RFP. Document in writing each question answered at the conference. Provide this information directly to parties who received the RFP but were unable to attend the conference or as an addendum to the RFP for any subsequent requesters.

Respond to questions regarding the RFP and the submission requirements. Record all responses, except those which are clearly answered in the RFP. Provide a written copy of the responses to all parties to whom the RFP has been distributed, including those who attended the bidders' conference. This should be provided in a timely and frequent manner to ensure that all bidders are aware of the responses when preparing their proposal.

Receive and log in proposals. Establish a method for recording the date and time of arrival of proposals. Ensure that only proposals received by the deadline specified in the RFP qualify for the evaluation process. Establish a single location for receipt of proposals, and document receipt of proposals using a log-in sheet or a date/time stamp.

* Must be conducted

Identify complete and timely proposals. Review the technical merits of these proposals based on the rating criteria contained in the RFP. Review the cost proposals based on applicable cost principles and the technical proposal.

Determine which proposals are in the competitive range for technical response and based on the cost and price analysis conducted prior to the RFP are with in the cost and price criteria.

Negotiate with organization(s) in the competitive range. Establish policies and procedures governing face-to-face negotiations. Include in these policies opportunities to seek clarification of the proposal content, the offeror to submit a "best and final" proposal prior to final evaluation and award. Include in the criteria that all responsive offerors in the competitive range are given fair and equal consideration based on the merits of their proposals. Document these negotiations in writing.

*Determine for participant service RFPs the demonstrated performance and ability of the highest rated offeror(s). This determination must be documented and should include independently verified information and data.

Make the award(s) and finalize the contract(s). Follow established procedures for formal notification of offerors of the results of the evaluations and selection process.